

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

WARREN EASTERLING, : Case No. 3:13-cv-24  
: :  
Petitioner, : Judge Timothy S. Black  
: Magistrate Judge Michael R. Merz  
vs. : :  
STATE OF OHIO, : :  
: :  
Respondent. : :

**DECISION AND ENTRY  
ADOPTING THE REPORT AND RECOMMENDATIONS  
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 50)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on July 20, 2015, submitted a Report and Recommendations. (Doc. 50). Petitioner filed Objections. (Doc. 51).<sup>1</sup>

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does

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<sup>1</sup> Petitioner argues that his Rule 60(b) motion for relief from judgment is not time barred by the one-year limitation in Rule 60(c) because he asserts that the judgment is void under Rule 60(b)(4). (Doc. 51). However, the Magistrate Judge correctly noted that Petitioner's motion is untimely as it was filed twenty-two months after judgment was entered and relies on case law which was reported well before entry of final judgment, and most of which case law, if not all, was cited to the Court before its entry of judgment. Accordingly, Petitioner's motion was not filed within a "reasonable time" after the entry of judgment pursuant to Rule 60(c).

determine that such Report and Recommendations should be and is hereby adopted in its entirety.

Accordingly:

1. The Report and Recommendations (Doc. 50) is **ADOPTED**;
2. Petitioner's Motion for Relief from Judgment (Doc. 49) is **DENIED**; and
3. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this Order would not be taken in good faith and therefore, Petitioner is denied leave to appeal *in forma pauperis*. He remains free, however, to apply to proceed *in forma pauperis* in the Court of Appeals.

**IT IS SO ORDERED.**

Date: 7/28/15

s/ Timothy S. Black  
Timothy S. Black  
United States District Judge